

Standard Seller Questionnaire will provide more protection for property buyers

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Moves are afoot to introduce a new, stream-lined process for selling property in Jersey.

For anyone selling freehold property, it will become mandatory to complete a Standard Seller Questionnaire regarding their property. The questionnaire will be completed at the beginning of the transaction and provided to the Buyer's lawyer, constituting a warranty from Seller to Buyer. If a knowingly incorrect answer is given, the Buyer would be able to sue the Seller for breach of warranty within three years of the transaction taking place, with the potential to claiming compensation for their loss, or in the worst case scenario, applying for the contract to be set aside.

The questionnaire has been introduced by the Jersey Law Society's Conveyancing Sub-Committee, and is its first major project. It coincided with a Scrutiny Panel review of property in Jersey which looked at ways to speed up transactions and, in particular, prevent gazumping. It has been a year in the preparation and law firms have been trialling it on a voluntary basis since 14th January.

Paul Harben, a partner at Collas Crill and Chair of the Conveyancing Sub-Committee said that the intention was to standardise and reduce the number of questions asked by a Buyer's lawyer, simplifying the sale process.

"There has been a tendency for the Buyer's conveyancer to ask more and more questions, to the extent that Sellers were paying less attention to their responses, even if incorrect, thereby rendering them meaningless", Mr Harben said.

"Sellers will know what is required from them from the outset and will better understand the risks of giving an untrue answer", he added, referring to a recent court case that found that a Buyer could take action against a Seller for giving incorrect information regarding their property, turning the general presumption that a Buyer buys at his own risk on its head.

The Conveyancing Sub-Committee is currently receiving and considering feedback on the questionnaire from law firms, with a view to it coming into force from 1st May.

Once mandatory, all law firms will be required to follow the procedure set out below when representing the Seller of a freehold property:

1. Enclose a copy of the Jersey Law Society's "Standard Seller Questionnaire" for their client to complete with their letter of engagement at the very beginning of the sale process.
2. The Seller (not their lawyer) must complete and sign the form covering matters within their knowledge and as they relate only to their period of ownership of the property.

3. The Seller's lawyer will send the signed form to the Buyer's lawyer early on. At the same time, the Buyer's lawyer will be conducting legal researches into the property, for example, boundaries and title, and issues relating to these would be raised separately with the Seller's lawyer.
4. The Buyer will be asked to countersign the questionnaire to effectively acknowledge the responses given by the Seller.
5. To ensure that the questionnaire is not toothless and that the Seller is fully aware of the fact that they have to give honest answers which can be relied upon by the purchaser, the current "buyer beware" clause in the contract of sale will be amended to read:

"THE Property was sold such as it is with all and whatsoever other rights, appurtenances and dependencies as may appertain thereto and save that the Purchaser shall be entitled to rely upon the responses given by the Vendor in the Standard Seller Questionnaire dated []. The Property was sold in the state in which the Property was found with all its defects hidden or apparent (vice cachés), if any, situate ..."

The questionnaire currently contains 28 confirmations for the Seller to provide, grouped under the following headings: Property/title; Insurance; Charges; Services and Drains; Planning and Building; Statutory Notices; Common parts and a General section. There is space on the form to provide further details as required or where a specific confirmation cannot be given.

It will be made available through estate agents and on the Law Society website so that potential Sellers will be aware of what will be required from them even before they put their property on the market. Ultimately, it should prevent the current problem of issues being raised at the last minute and thereby delaying completion.

Once the questionnaire becomes mandatory, the Sub-Committee, which is made up of nine representatives from law firms dealing with about 90% of residential conveyancing in the Island, will work to adapt it to cater for flying freehold and share transfer sales.

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